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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9  
10 Devin Andrich, a single man,  
11  
12 Plaintiff,

13 v.

14 Navient Solutions, Inc., a Delaware  
15 corporation; Navient Solutions, LLC, a  
16 foreign limited liability company;  
17 Pennsylvania Higher Education Assistance  
18 Agency, a Pennsylvania corporation;  
19 Performant Recovery Services, Inc., a  
California corporation; and DOES I-X, as  
individuals or entities,

20 Defendants.

No. CV-18-02766-PHX-DLR

**FIRST AMENDED COMPLAINT**

**(Violation of 15 U.S.C. §1681 et seq.;  
Violation of 15 U.S.C. §1692 et seq.;  
Breach of Contract; Breach of the  
Covenant of Good Faith & Fair Dealing;  
Misrepresentation And Defamation)**

21  
22 Plaintiff, Devin Andrich, pursuant to this Court's Order dated September 1, 2018  
23 (*Dkt. #9*), files his First Amended Complaint against Defendants, alleging as follows:

24  
25 **PARTIES, JURISDICTION AND VENUE**

26 1. Plaintiff Devin Andrich is a resident of Maricopa County, Arizona  
27 ("Andrich" or "Plaintiff").  
28

1           2.     On information and belief, Defendant Navient Solutions, Inc., was at all  
2 times relevant, a Delaware corporation, authorized to do business in the State of Arizona.

3           3.     On information and belief, Defendant Navient Solutions, LLC, was at all  
4 times relevant, a Delaware limited liability company, authorized to do business in the  
5 State of Arizona.

6           4.     Defendants Navient Solutions, Inc. and Defendant Navient Solutions, LLC  
7 are collectively herein referred to as, “Navient.”  
8

9           5.     On information and belief, Defendant Pennsylvania Higher Education  
10 Assistance Agency, Inc. (“PHEAA”), was at all times relevant, a Pennsylvania  
11 corporation, authorized to do business in the State of Arizona.  
12

13           6.     On information and belief, Defendant Performant Recovery Services, Inc.  
14 (“Performant”), was at all times relevant, a Delaware corporation, authorized to do  
15 business in the State of Arizona.  
16

17           7.     Defendants, Does I-X, as individuals or entities (“Does”), and the unknown  
18 heirs and devisees of any of the Does, as natural persons, who may be deceased, with a  
19 singular or plural, or fictitious names designating an individual or individuals, masculine  
20 or feminine, or legal entities, whose present identities are unknown to Plaintiff. Plaintiff  
21 will request leave of the Court to insert the true identity of any such Defendants when  
22 discovered as if correctly named originally and who are liable for all or part of Plaintiff’s  
23 claims herein.  
24

25           8.     Defendants caused events or allowed acts or events to occur in Maricopa  
26 County, Arizona out of which the following causes of action arise.  
27  
28

1           9.     This Court has jurisdiction over this action pursuant to 15 U.S.C. §1681, 15  
2 U.S.C. §1692 et seq., 28 U.S.C. §§1331, 1367 and 2201(a).

3           10.    The Court also has jurisdiction over this action pursuant to 28 U.S.C.  
4 §1332, based on the parties' diversity of citizenship and because the amount in  
5 controversy exceeds Seventy Five Thousand Dollars (\$75,000).  
6

7           11.    Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391,  
8 and this Court has personal jurisdiction over Defendants and each of them, by reason of  
9 the fact that, among other things, many of the events giving rise to this action arose in  
10 Arizona, including within Maricopa County.  
11

12  
13                                   **FACTUAL ALLEGATIONS**

14                   **Plaintiff Enters Into a Loan Agreement With Original Loan Servicer Sallie Mae**  
15                   **And Sallie Mae Assigns the Loan Agreement to Defendant Navient**

16           12.    On/about October 5, 2003, Plaintiff entered into a written agreement with  
17 federal student loan servicer, Sallie Mae (the "Loan Agreement").  
18

19           13.    Under the terms of the Loan Agreement, Sallie Mae consolidated all of  
20 Plaintiff's student loans federally insured by guarantor, the United States of America, or  
21 its designated agent.  
22

23           14.    On information and belief, under the terms of the Loan Agreement the  
24 Plaintiff's consolidated student loans are each classified as, a "Federally Guaranteed  
25 Student Loan."  
26

27           15.    On information and belief, under the terms of the Loan Agreement,  
28 Plaintiff would make monthly payments to Sallie Mae or its designated assignee.

1           16. Under the terms of the Loan Agreement and the section labeled  
2 “Borrower’s Rights and Responsibilities,” Paragraph 2, Plaintiff would update his  
3 permanent address with Sallie Mae or its designated assignee when Plaintiff changed  
4 permanent mailing addresses.  
5

6           17. Under the terms of the Loan Agreement and the section labeled  
7 “Borrower’s Rights and Responsibilities” Paragraph 2, Plaintiff would notify Sallie Mae  
8 or its designated assignee when Plaintiff’s status changed that would affect Plaintiff’s  
9 Loan Agreement.  
10

11           18. Under the terms of the Loan Agreement, Sallie Mae or its designated  
12 assignee would service Plaintiff’s consolidated student loans at a fixed interest rate of  
13 3.625% per annum until Plaintiff satisfied the outstanding loan balance.  
14

15           19. Under the terms of the Loan Agreement and Paragraph 8 of Borrower’s  
16 Rights and Responsibilities, “Upon request, [Sallie Mae or its designated assignee] will  
17 provide [Plaintiff] with a deferment application that explains [Plaintiff’s] eligibility  
18 requirements,” to Plaintiff’s permanent address.  
19

20           20. Under the terms of the Loan Agreement and Paragraph 8 of Borrower’s  
21 Rights and Responsibilities, Plaintiff has a right to defer or postpone repayments under  
22 the Loan Agreement to Sallie Mae or its designated assignee, while Plaintiff is,  
23 “...experiencing an economic hardship as determined by federal law.”  
24

25           21. Under the terms of the Loan Agreement and Paragraph 9 of Borrower’s  
26 Rights and Responsibilities, Sallie Mae or its designated assignee is required to grant  
27  
28

1 Plaintiff a forbearance if Plaintiff has, “a monthly debt burden for Title IV loans that  
2 collectively equals or exceeds 20% of [Plaintiff’s] total monthly gross income.”

3       22. On information and belief Sallie Mae and its assignees entered into an  
4 agreement with loan guarantor, Defendant PHEAA, regarding the servicing of all  
5 federally insured student loans, including Plaintiff’s consolidated student loans (the  
6 “Guarantor Agreement”).  
7

8       23. On information and belief, under the terms of the Guarantor Agreement,  
9 Plaintiff is an intended third party beneficiary.  
10

11       24. On information and belief, under the terms of the Guarantor Agreement,  
12 Defendant Navient is required to deliver notices and correspondence to the borrower’s  
13 permanent address that the borrower provides to Defendant Navient.  
14

15       25. On information and belief, under the terms of the Guarantor Agreement,  
16 Defendant Navient is required provide the borrower with deferment or forbearance  
17 applications upon the borrower’s written request.  
18

19       26. On information and belief, under the terms of the Guarantor Agreement,  
20 Defendant Navient is required to review the borrower’s deferment or forbearance  
21 applications, prior to declaring a default under the loan agreement with the borrower.  
22

23       27. On information and belief, under the terms of the Guarantor Agreement,  
24 Defendant Navient is required to report to PHEAA, the results of reviewing a borrower’s  
25 deferment or forbearance application when declaring a default under the loan agreement  
26 with the borrower.  
27  
28

1           28.    On information and belief, Sallie Mae notified Plaintiff that Sallie Mae sold  
2 or otherwise assigned the Loan Agreement to Defendant Navient.

3           29.    Under the terms of the Loan Agreement, Defendant Navient as the Loan  
4 Agreement's assignee was bound by the terms of the Loan Agreement originally entered  
5 into between Sallie Mae and Plaintiff.  
6

7  
8           **Plaintiff While Incarcerated Mails Numerous Correspondence to Defendant Navient**  
9           **Updating Plaintiff's Permanent Addresses And Requests Deferment And**  
10          **Forbearance Applications Due to Plaintiff's Documented Economic Hardship, But**  
11          **Defendant Navient Ignores Plaintiff's Correspondence**

12           30.    Plaintiff incorporates the allegations in the paragraphs above as if set forth  
13 fully herein.

14           31.    On/about February 18, 2014, the State of Arizona indicted Plaintiff on  
15 suspicion of misappropriation of client funds in Maricopa County Superior Court Case  
16 No.: CR2014-108114 – *State of Arizona v. Andrich*.  
17

18           32.    On July 8, 2015, the *State of Arizona v. Andrich* Court sentenced Plaintiff  
19 to three-and-one-half (3.5) years in prison.

20           33.    On July 10, 2015, Plaintiff began serving his prison sentence at the Arizona  
21 Department of Corrections ("ADC").  
22

23           34.    On August 17, 2015, ADC transfer Plaintiff to a prison in Tucson,  
24 Arizona.  
25

26           35.    On December 22, 2015, Plaintiff drafted and mailed a letter via United  
27 States mail to Defendant Navient.  
28

1           36. Plaintiff's December 22, 2015 letter to Defendant Navient informed  
2 Defendant Navient of Plaintiff's then-permanent address in Tucson, Arizona.

3           37. Plaintiff's December 22, 2015 letter to Defendant Navient enclosed a form  
4 created by Defendant Navient that Defendant Navient instructs borrowers such a Plaintiff  
5 to use when requesting a student loan payment deferment or forbearance under the Loan  
6 Agreement.  
7

8           38. Plaintiff's December 22, 2015 letter to Defendant Navient was not returned  
9 to Plaintiff's then-permanent address as "undeliverable."  
10

11           39. Between December 22, 2015, and the date of this First Amended  
12 Complaint, Defendant Navient neither responded to Plaintiff's December 22, 2015  
13 request for a student loan payment deferment or forbearance, nor mailed any  
14 correspondence to Plaintiff's then-permanent address, warning Plaintiff of a pending or  
15 possible default under the Loan Agreement.  
16

17           40. On October 21, 2016, Plaintiff drafted and mailed a letter via United States  
18 mail to Defendant Navient, updating Plaintiff's then-permanent address and requesting  
19 the status of Plaintiff's student loan payment deferment or forbearance application  
20 submitted to Defendant Navient, or alternatively, requesting a student loan payment  
21 deferment or forbearance.  
22

23           41. Plaintiff's October 21, 2016 letter to Defendant Navient informed  
24 Defendant Navient of Plaintiff's then-permanent address in Safford, Arizona.  
25

26           42. Plaintiff's October 21, 2016 letter to Defendant Navient was not returned to  
27 Plaintiff's then-permanent address as "undeliverable."  
28

1           43. Between October 21, 2016 and the date of this First Amended Complaint,  
2 Defendant Navient neither responded to Plaintiff's October 21, 2016 request for a student  
3 loan payment deferment or forbearance, nor mailed any correspondence to Plaintiff,  
4 warning Plaintiff of a pending or possible default under the Loan Agreement.  
5

6  
7           **Plaintiff is Released From Prison And Discovers That Defendant Navient Did Not**  
8           **Enter Plaintiff's Student Loan Into Deferment or Forbearance, But Instead**  
9           **Immediately Defaulted Plaintiff's Student Loan to Illegally Recoup Funds From**  
              **Federal Loan Guarantor PHEAA**

10           44. Plaintiff incorporates the allegations in the paragraphs above as if set forth  
11 fully herein.

12           45. On September 1, 2017, Plaintiff was released from prison and eligible to  
13 attend college.  
14

15           46. On October 1, 2017, Plaintiff drafted and mailed a letter via United States  
16 mail to Defendant Navient.  
17

18           47. Plaintiff's October 1, 2017 letter to Defendant Navient informed Defendant  
19 Navient of Plaintiff's updated permanent address in Phoenix, Arizona.

20           48. Plaintiff's October 1, 2017 letter to Defendant Navient requested a student  
21 loan payment deferment or forbearance under the Loan Agreement.  
22

23           49. On November 1, 2017, Navient mailed a letter via United States mail to  
24 Plaintiff, stating that Defendant Navient could not approve Plaintiff for a student loan  
25 payment deferment or forbearance under the Loan Agreement, because Defendant  
26 Navient declared and entered Plaintiff's default under the Loan Agreement.  
27  
28



1           50. Upon Defendant Navient declaring and entering Plaintiff's default under  
2 the Loan Agreement, Defendant Navient made numerous false statements to Defendant  
3 PHEAA that Plaintiff defaulted under the Loan Agreement.

4  
5           51. Upon Defendant Navient declaring and entering Plaintiff's default under  
6 the Loan Agreement, Defendant Navient made false numerous statements to several  
7 credit reporting agencies that Plaintiff defaulted under the Loan Agreement.

8  
9           52. Upon Defendant Navient declaring and entering Plaintiff's default under  
10 the Loan Agreement, Defendant Navient subsequently sold or otherwise assigned its  
11 rights under the Loan Agreement to Defendant PHEAA.

12  
13           53. Upon Defendant PHEAA acquiring the Defendant Navient's declaring and  
14 rights under the Loan Agreement, Defendant PHEAA made numerous false statements to  
15 several credit reporting agencies that Plaintiff defaulted under the Loan Agreement.

16  
17           54. On/about December 1, 2017, Defendant PHEAA retained debt collector  
18 Defendant Performant to collect from Plaintiff, the purported outstanding loan balance,  
19 default interest and fees under the Loan Agreement.

20  
21           55. On March 21, 2018, Defendant Performant mailed Plaintiff a letter,  
22 demanding One Hundred Ninety One Thousand Six Hundred Seven Dollars and 43/100  
23 (\$191,607.43) from Plaintiff, stating that Defendant Performant's March 21, 2018  
24 correspondence was from a debt collector and an attempt to collect a debt.

25  
26           56. As a result of Defendant Navient entering a Loan Agreement default  
27 against Plaintiff, Plaintiff cannot apply for federal loan programs necessary for Plaintiff  
28 to pay tuition and attend college.

1           57. As a result of Defendant Navient entering a Loan Agreement default  
2 against Plaintiff, as of the date of this First Amended Complaint, Plaintiff has missed  
3 three (3) semesters of school necessary for Plaintiff work in a trade or profession other  
4 than practicing law.  
5

6           58. Under the terms of Plaintiff's sentencing and probation, the State of  
7 Arizona and *State v. Andrich* Court require Plaintiff to attend school and obtain gainful,  
8 lucrative employment in furtherance of paying a Criminal Restitution Order.  
9

10           59. As of the date of Plaintiff's First Amended Complaint, Plaintiff contacted  
11 Equifax, Experian and TransUnion to dispute the accuracy of the information that  
12 Defendants, as well as, Equifax, Experian and TransUnion reported about Plaintiff.  
13

14           60. Beginning April 14, 2018, Plaintiff contacted Defendants, advising  
15 Defendants that its trade lines on Plaintiff's Equifax, Experian and TransUnion credit  
16 reports was reflecting that Plaintiff defaulted under the Loan Agreement and that it was  
17 causing Plaintiff problems with being approved for credit.  
18

19           61. Despite Defendants PHEAA's and Performant's actual knowledge that  
20 Plaintiff objectively did not default under the Loan Agreement, on May 4, 2018,  
21 Defendant Performant (on behalf of Defendant PHEAA), delivered correspondence to  
22 Plaintiff stating that Defendant Performant and PHEAA would not remove the trade line  
23 on Plaintiff's Equifax, Experian and TransUnion credit reports that Plaintiff defaulted  
24 under the Loan Agreement, but rather add language, indicating that the matter was in  
25 dispute.  
26  
27  
28

62. On November 7, 2018, Plaintiff memorialized Defendants' ongoing violations of the Fair Credit Reporting Act against Plaintiff's credit reports in correspondence to Equifax, Experian and TransUnion.

## **LEGAL CLAIMS**

### **COUNT ONE**

**(Defendants Navient, Violated the Fair Credit Reporting Act 15 U.S.C. §1681 et seq. When Making False Statements to Numerous Credit Reporting Agencies That Plaintiff Defaulted on Federally Guaranteed Loan Agreement )**

63. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

64. Under the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. ("FCRA") furnishers of credit information have a duty under the FCRA to investigate disputes from consumers as to the accuracy of information reported about them, *to wit*:

After receiving notice pursuant to section 611(a)(2) [§ 1681*i*] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall:

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681*i*];

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for

1 purposes of reporting to a consumer reporting agency only, as appropriate, based  
2 on the results of the reinvestigation promptly –

- 3 (i) modify that item of information;  
4 (ii) delete that item of information; or  
5 (iii) permanently block the reporting of that item of information.

6 *See* 15 U.S.C. § 1681s-2(b)(1).

7 65. On or around November 7, 2018, Plaintiff contacted Equifax, Experian and  
8 TransUnion to dispute the accuracy of the information being reported about him.

9 66. Upon information and belief, pursuant to 15 U.S.C. § 1681i(a)(2),  
10 Defendant Navient received notification of this dispute from Equifax, Experian and  
11 TransUnion.  
12

13 67. By the time Defendant Navient received this credit bureau dispute,  
14 Defendant Navient, directly and via Defendant Navient's attorneys of record, had already  
15 been contacted on numerous occasions by Plaintiff, advising Defendant Navient that its  
16 trade line on Plaintiff's Equifax, Experian and TransUnion credit reports was reflecting  
17 that Plaintiff defaulted under the Loan Agreement and that it was causing Plaintiff  
18 problems with being approved for credit.  
19  
20

21 68. Defendant Navient failed to conduct a reasonable investigation into the  
22 accuracy of information related to the disputed trade line, in violation of Section 1681s-  
23 2(b)(1).  
24

25 69. Notwithstanding Defendant Navient's actual knowledge that Defendant  
26 Navient breached its duties under the Loan Agreement terms, specifically Borrower's  
27 Rights and Responsibilities Paragraphs 2, 8, & 9; declared a default to Plaintiff and  
28

1 Defendant PHEAA; and made false statements to Defendant PHEAA, Equifax, Experian  
2 and TransUnion that Plaintiff defaulted under the Loan Agreement, Defendant Navient's  
3 failure to conduct a reasonable investigation of the accuracy of its reporting of this  
4 adverse information shows a reckless disregard for Plaintiff's rights under the FCRA.  
5

6 70. In addition to the violation as described above, Defendant Navient failed to  
7 satisfy its duty under Section 1681s-2(b) of updating incomplete or inaccurate  
8 information it had previously reported to Equifax, Experian and TransUnion upon receipt  
9 of each notice from Equifax, Experian and TransUnion that Plaintiff disputed the  
10 accuracy of the previously reported information.  
11

12 71. Defendant Navient's failure to report that Plaintiff had not defaulted under  
13 the Loan Agreement was a failure to accurately update the information because it was  
14 "misleading in such a way and to such an extent that it [could] be expected to have an  
15 adverse effect" on Plaintiff. *Gorman v. Wolpoff & Abramson, LLP, et al.*, 584 F.3d 1147  
16 (9<sup>th</sup> Cir. 2009); *See also Saunders v. Branch Banking & Trust Co. of Va.*, 526 F.3d 142  
17 (4<sup>th</sup> Cir. 2008).  
18

19 72. As a direct and proximate result of Defendant Navient's willful and/or  
20 negligent refusal to comply with the FCRA as outlined above, Plaintiff has suffered  
21 substantial loss and damage including, but not limited to: economic loss due to Plaintiff's  
22 inability to apply for and obtain federally-insured student loans, loss of opportunity to  
23 obtain credit, damage to reputation, expenditure of considerable time and out-of-pocket  
24 expenses, worry, fear, distress, frustration and embarrassment, entitling Plaintiff to an  
25  
26  
27  
28

1 award of actual damages in amounts to be proved at trial, plus costs of this action  
2 pursuant to 15 U.S.C. § 1681o.

3 73. As a direct and proximate cause Defendant Navient's negligent or willful  
4 failure to perform its duties under the Fair Credit Reporting Act, Plaintiff is chilled from  
5 applying to and taking college courses, necessary for Plaintiff to pursue a new career  
6 after Plaintiff's incarceration.  
7

8 74. As a direct and proximate cause Defendant Navient's negligent or willful  
9 failure to perform its duties under the Fair Credit Reporting Act, Plaintiff has suffered  
10 damages, mental anguish, suffering, humiliation and embarrassment, due to Plaintiff's  
11 inability to obtain federal student loans necessary for Plaintiff to attend college; obtain  
12 new skills and degrees and use the new skills and degrees to obtain gainful, lucrative  
13 employment as required under the *State v. Andrich* terms of Plaintiff's probation in order  
14 to satisfy a Criminal Restitution Order.  
15  
16

17 75. Defendant Navient's complete and utter indifference as to its obligations  
18 under the FCRA reveals a conscious disregard of the rights of Plaintiff, and the injuries  
19 suffered by Plaintiff are attended by circumstances of fraud, malice, and willful and  
20 wanton misconduct, calling for an assessment of punitive damages against Defendant  
21 Navient, pursuant to 15 U.S.C. § 1681n(a)(2).  
22  
23

24 THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

- 25 (a) For an Order declaring that Defendant Navient has violated Plaintiff's  
26 rights under the Fair Credit Reporting Act 15 U.S.C. §1681 et seq.;
- 27 (b) For Plaintiff's actual, punitive and statutory damages, provided by 15  
28 U.S.C. § 1681n(2) in an amounts to be proven at trial;

- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses as provided for by 15 U.S.C. § 1681n(3) & 15 U.S.C. § 1681o(2); and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

## COUNT TWO

### **(Defendant PHEAA And Defendant PHEAA's Agent, Defendant Performant, Violated the Fair Credit Reporting Act 15 U.S.C. §1681 et seq. When Making False Statements to Numerous Credit Reporting Agencies That Plaintiff Defaulted on Federally Guaranteed Loan Agreement )**

76. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

77. After informed by Plaintiff that under the terms of the Loan Agreement, Plaintiff updated his permanent address and sought a deferment or forbearance, Defendant Navient ignored Plaintiff's request, breached the terms of the Loan Agreement and declared and entered a Loan Agreement default against Plaintiff.

78. After entering a default under the Loan Agreement, Defendant Navient sold or otherwise assigned Defendant Navient's rights under the Loan Agreement to Defendant PHEAA.

79. Under the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. ("FCRA") furnishers of credit information have a duty under the FCRA to investigate disputes from consumers as to the accuracy of information reported about them, *to wit*:

After receiving notice pursuant to section 611(a)(2) [§ 1681i] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall:

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681i];

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly –

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

*See* 15 U.S.C. § 1681s-2(b)(1).

80. On or around November 7, 2018, Plaintiff contacted Equifax, Experian and TransUnion to dispute the accuracy of the information being reported about him.

81. Upon information and belief, pursuant to 15 U.S.C. § 1681i(a)(2), Defendants PHEAA and Performant received notification of this dispute from Equifax, Experian and TransUnion.

82. By the time Defendants PHEAA and Performant received this credit bureau dispute, Defendants PHEAA and Performant, had already been contacted on numerous occasions by Plaintiff, advising Defendants PHEAA and Performant that its trade line on Plaintiff's Equifax, Experian and TransUnion credit reports was reflecting that Plaintiff



1 defaulted under the Loan Agreement and that it was causing Plaintiff problems with  
2 being approved for credit.

3 83. Defendants PHEAA and Performant failed to conduct a reasonable  
4 investigation into the accuracy of information related to the disputed trade line, in  
5 violation of Section 1681s-2(b)(1).  
6

7 84. Notwithstanding Defendants PHEAA's and Performant's actual knowledge  
8 that Defendants Navient and PHEAA breached their duties under the Loan Agreement  
9 terms, specifically Borrower's Rights and Responsibilities Paragraphs 2, 8, & 9; continued  
10 entering a default against Plaintiff; and made false statements to Equifax, Experian and  
11 TransUnion that Plaintiff defaulted under the Loan Agreement, Defendants PHEAA's  
12 and Performant's failure to conduct a reasonable investigation of the accuracy of its  
13 reporting of this adverse information shows a reckless disregard for Plaintiff's rights  
14 under the FCRA.  
15  
16  
17

18 85. In addition to the violation as described above, Defendants PHEAA and  
19 Performant failed to satisfy their duties under Section 1681s-2(b) of updating incomplete  
20 or inaccurate information it had previously reported to Equifax, Experian and TransUnion  
21 upon receipt of each notice from Equifax, Experian and TransUnion that Plaintiff  
22 disputed the accuracy of the previously reported information.  
23

24 86. Defendants PHEAA's and Performant's failure to report that Plaintiff had  
25 not defaulted under the Loan Agreement was a failure to accurately update the  
26 information because it was "misleading in such a way and to such an extent that it [could]  
27 be expected to have an adverse effect" on Plaintiff. *Gorman v. Wolpoff & Abramson*,  
28

1 *LLP, et al.*, 584 F.3d 1147 (9<sup>th</sup> Cir. 2009); *See also Saunders v. Branch Banking & Trust*  
2 *Co. of Va.*, 526 F.3d 142 (4<sup>th</sup> Cir. 2008).

3 87. As a direct and proximate result of Defendants PHEAA's and Performant's  
4 willful and/or negligent refusal to comply with the FCRA as outlined above, Plaintiff has  
5 suffered substantial loss and damage including, but not limited to: economic loss due to  
6 Plaintiff's inability to apply for and obtain federally-insured student loans, loss of  
7 opportunity to obtain credit, damage to reputation, expenditure of considerable time and  
8 out-of-pocket expenses, worry, fear, distress, frustration and embarrassment, entitling  
9 Plaintiff to an award of actual damages in amounts to be proved at trial, plus costs of this  
10 action pursuant to 15 U.S.C. § 1681*o*.

11 88. As a direct and proximate cause Defendants PHEAA's and Performant's  
12 negligent or willful failure to perform its duties under the FCRA, Plaintiff is chilled from  
13 applying to and taking college courses, necessary for Plaintiff to pursue a new career  
14 after Plaintiff's incarceration.

15 89. As a direct and proximate cause Defendants PHEAA's and Performant's  
16 negligent or willful failure to perform its duties under the FCRA, Plaintiff has suffered  
17 damages, mental anguish, suffering, humiliation and embarrassment, due to Plaintiff's  
18 inability to obtain federal student loans necessary for Plaintiff to attend college; obtain  
19 new skills and degrees and use the new skills and degrees to obtain gainful, lucrative  
20 employment as required under the *State v. Andrich* terms of Plaintiff's probation in order  
21 to satisfy a Criminal Restitution Order.

90. Defendants PHEAA's and Performant's complete and utter indifference as to its obligations under the FCRA reveals a conscious disregard of the rights of Plaintiff, and the injuries suffered by Plaintiff are attended by circumstances of fraud, malice, and willful and wanton misconduct, calling for an assessment of punitive damages against Defendant Navient, pursuant to 15 U.S.C. § 1681n(a)(2).

THEREFORE, Plaintiff requests Judgment against Defendants PHEAA and Performant, as follows:

- (a) For an Order declaring that Defendants PHEAA and Performant have violated Plaintiff's rights under the Fair Credit Reporting Act 15 U.S.C. §1681 et seq.;
- (b) For Plaintiff's actual, punitive and statutory damages, provided by 15 U.S.C. § 1681n(2) in an amounts to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses as provided for by 15 U.S.C. § 1681n(3) & 15 U.S.C. § 1681o(2); and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

**COUNT THREE**  
**(Defendant Performant Violated the Fair Debt Collections Practices Act 15 U.S.C. §1682 et seq. When Attempting Collection of a Debt That Does Not Exist Under the Loan Agreement )**

91. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

92. On March 21, 2018, Defendant Performant attempted collecting debt from

1 Plaintiff that is not valid, because Plaintiff did not default under a Loan Agreement with  
2 Defendant Navient, as assigned to Defendant PHEAA.

3 93. On March 21, 2018, Defendant Performant attempted collecting more funds  
4 from Plaintiff than Plaintiff owes under the Loan Agreement.  
5

6 94. On March 21, 2018, Defendant Performant attempted collecting interest,  
7 fees and expenses that are not permitted by law or under the Loan Agreement.  
8

9 95. On March 21, 2018, Defendant Performant attempted using deceptive  
10 methods to collect amounts that are not due under the Loan Agreement.

11 96. On March 21, 2018, Defendant Performant made statements to credit  
12 reporting agencies concerning Plaintiff that Plaintiff defaultd under the Loan Agreement  
13 and owes amounts that are not due under the Loan Agreement.  
14

15 97. Between March 21, 2018, and the date of this First Amended Complaint,  
16 Defendant Performant made no reasonable attempts to verify either any default under the  
17 Loan Agreement, or validity of the alledge debt under the Loan Agreement.  
18

19 98. Defendant Performant's acts and omissions detalied above violate and  
20 continue to violate the Fair Debt Collections Practices Act 15 U.S.C. §1682 et seq.  
21

22 THEREFORE, Plaintiff requests Judgment against Defendant Performant as  
23 follows:

- 24 (a) For an Order declaring that Defendant Performant violated Plaintiff's rights  
25 under the Fair Debt Collections Practices Act 15 U.S.C. §1682 et seq.;
- 26 (b) For Plaintiff's compensatory, consequential, incidental and punitive  
27 damages in an amount to be proven at trial;
- 28 (c) For pre-interest and post-interest (if applicable) at the highest rate allowed

1 by law;

2 (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses;  
3 and

4 (e) For such other and further relief as this Court deems just and proper under  
5 the circumstances.

6 **COUNT FOUR**

7 **(Defendant Navient Breached the Terms of a Written Loan Agreement With**  
8 **Plaintiff When Refusing to Communicate With Plaintiff at Permanent Addresses**  
9 **Plaintiff Provided to Defendant Navient And Reviewing Plaintiff's Requests for a**  
10 **Deferment or Forbearance Under the Terms of the Loan Agreement, Opting**  
11 **Instead to Declare And Enter a Default Under the**  
12 **Loan Agreement Against Plaintiff)**

13 99. Plaintiff incorporates the allegations in the paragraphs above as if set forth  
14 fully herein.

15 100. The Loan Agreement terms required Defendant Navient to deliver  
16 correspondence and notices to Plaintiff at the permanent address that Plaintiff updated in  
17 writing to Defendant Navient.

18 101. The Loan Agreement terms require, "Upon [Plaintiff's] request, [Defendant  
19 Navient] will provide [Plaintiff] with a deferment application that explains [Plaintiff's]  
20 eligibility requirements.

21 102. The Loan Agreement Agreement terms give Plaintiff a right to defer or  
22 postpone repayments to Defendant Navient, while Plaintiff is, "...experiencing an  
23 economic hardship as determined by federal law."

24 103. The Loan Agreement Agreement terms require Defendant Navient to grant  
25 Plaintiff a forbearance if Plaintiff has, "a monthly debt burden for Title IV loans that  
26 collectively equals or exceeds 20% of [Plaintiff's] total monthly gross income."  
27  
28

1           104. Defendant Navient breached the Loan Agreement terms with Plaintiff on  
2 December 22, 2015, when refusing to communicate with or otherwise send  
3 correspondence and notices to Plaintiff at Plaintiff's updated permanent address Plaintiff  
4 identified to Defendant Navient.  
5

6           105. Defendant Navient breached the Loan Agreement terms with Plaintiff on  
7 October 21, 2016, when refusing to communicate with or otherwise send correspondence  
8 and notices to Plaintiff at Plaintiff's updated permanent address Plaintiff identified to  
9 Defendant Navient.  
10

11           106. Defendant Navient breached the Loan Agreement terms with Plaintiff when  
12 refusing to provide Plaintiff with a deferment application that explains Plaintiff's  
13 eligibility requirements at Plaintiff's permanent address provided to Plaintiff.  
14

15           107. Defendant Navient breached the Loan Agreement terms with Plaintiff when  
16 denying Plaintiff a right to defer or postpone repayments to Defendant Navient, while  
17 Plaintiff is, "...experiencing an economic hardship as determined by federal law."  
18

19           108. Defendant Navient breached the Loan Agreement terms with Plaintiff when  
20 refusing to send correspondence to Plaintiff's current mailing addresses in 2015 and  
21 2016, informing Plaintiff about any steps Plaintiff should take to avoid or otherwise  
22 prevent Plaintiff's possible default under the Loan Agreement.  
23

24           109. Defendant Navient breached the Loan Agreement terms with Plaintiff when  
25 refusing to consider or grant Plaintiff a forbearance, despite Plaintiff having, "a monthly  
26 debt burden for Title IV loans that collectively equals or exceeds 20% of [Plaintiff's]  
27 total monthly gross income."  
28



1           114. A party to an agreement has a duty to act fairly and in good faith. This duty  
2 is required by law and need not be in writing, because it is implied in every agreement.

3           115. The Loan Agreement terms required Defendant Navient to deliver  
4 correspondence and notices to Plaintiff at the permanent address that Plaintiff updated in  
5 writing to Defendant Navient.

6           116. The Loan Agreement terms require, “Upon [Plaintiff’s] request, [Defendant  
7 Navient] will provide [Plaintiff] with a deferment application that explains [Plaintiff’s]  
8 eligibility requirements.”

9           117. The Loan Agreement Agreement terms give Plaintiff a right to defer or  
10 postpone repayments to Defendant Navient, while Plaintiff is, “...experiencing an  
11 economic hardship as determined by federal law.”

12           118. The Loan Agreement Agreement terms require Defendant Navient to grant  
13 Plaintiff a forbearance if Plaintiff has, “a monthly debt burden for Title IV loans that  
14 collectively equals or exceeds 20% of [Plaintiff’s] total monthly gross income.”

15           119. Defendant Navient breached its duty of good faith and fair dealing to  
16 Plaintiff on December 22, 2015, when refusing to communicate with or otherwise send  
17 correspondence and notices to Plaintiff at Plaintiff’s updated permanent address Plaintiff  
18 identified to Defendant Navient.

19           120. Defendant Navient breached its duty of good faith and fair dealing to  
20 Plaintiff on October 21, 2016, when refusing to communicate with or otherwise send  
21 correspondence and notices to Plaintiff at Plaintiff’s updated permanent address Plaintiff  
22 identified to Defendant Navient.



1           121. Defendant Navient breached its duty of good faith and fair dealing to  
2 Plaintiff when refusing to provide Plaintiff with a deferment application that explains  
3 Plaintiff's eligibility requirements at Plaintiff's permanent address provided to Plaintiff.  
4

5           122. Defendant Navient breached its duty of good faith and fair dealing to  
6 Plaintiff when denying Plaintiff a right to defer or postpone repayments to Defendant  
7 Navient, while Plaintiff is, "...experiencing an economic hardship as determined by  
8 federal law."  
9

10           123. Defendant Navient breached its duty of good faith and fair dealing to  
11 Plaintiff when refusing to send correspondence to Plaintiff's current mailing addresses in  
12 2015 and 2016, informing Plaintiff about any steps Plaintiff should take to avoid or  
13 otherwise prevent Plaintiff's possible default under the Loan Agreement.  
14

15           124. Defendant Navient breached its duty of good faith and fair dealing to  
16 Plaintiff when refusing to consider or grant Plaintiff a forbearance, despite Plaintiff  
17 having, "a monthly debt burden for Title IV loans that collectively equals or exceeds 20%  
18 of [Plaintiff's] total monthly gross income."  
19

20           125. Defendant Navient breached its duty of good faith and fair dealing to  
21 Plaintiff when entering a default under the Loan Agreement against Plaintiff.  
22

23           126. As a result of Defendant Navient breaching its duty of good faith and fair  
24 dealing to Plaintiff, Plaintiff has suffered economic losses to be proven at trial, but not  
25 less than One Hundred Ninety One Thousand Six Hundred Seven Dollars and 43/100  
26 (\$191,607.43).  
27

28           THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

- 1 (a) For an Order declaring that Defendant Navient breached its duty of good  
2 faith and fair dealing to Plaintiff under the written Loan Agreement terms  
3 with Plaintiff;
- 4 (b) For Plaintiff's compensatory, consequential, incidental and economic  
5 damages in an amount to be proven at trial;
- 6 (c) For pre-interest and post-interest (if applicable) at the highest rate allowed  
7 by law;
- 8 (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses;  
9 and
- 10 (e) For such other and further relief as this Court deems just and proper under  
11 the circumstances.

12 **COUNT SIX**

13 **(Defendant Navient Committed Negligent Misrepresentation Under a Written Loan**  
14 **Agreement With Plaintiff When Refusing to Both Communicate With Plaintiff at**  
15 **Permanent Addresses Plaintiff Provided to Defendant Navient, And Reviewing**  
16 **Plaintiff's Requests for a Deferment or Forbearance Under the Terms of the Loan**  
17 **Agreement, Opting Instead to Declare And Enter a Default Under the Loan**  
18 **Agreement Against Plaintiff)**

19 127. Plaintiff incorporates the allegations in the paragraphs above as if set forth  
20 fully herein.

21 128. Defendant Navient and Plaintiff were parties to a written Loan Agreement.

22 129. Defendant Navient omitted or failed to disclose material information to  
23 Plaintiff that even though the Loan Agreement terms required Defendant Navient to  
24 deliver correspondence and notices to Plaintiff at the permanent address that Plaintiff  
25 updated in writing to Defendant Navient, Defendant Navient would not deliver  
26 correspondence and notices to Plaintiff at the permanent address.

27 130. Defendant Navient omitted or failed to disclose material information to  
28 Plaintiff that even though the Loan Agreement terms require, "Upon [Plaintiff's] request,

1 [Defendant Navient] will provide [Plaintiff] with a deferment application that explains  
2 [Plaintiff's] eligibility requirements, Defendant Navient would not provide Plaintiff with  
3 a deferment application.  
4

5 131. Defendant Navient omitted or failed to disclose material information to  
6 Plaintiff that even though the Loan Agreement terms give Plaintiff a right to defer or  
7 postpone repayments to Defendant Navient, while Plaintiff is, "...experiencing an  
8 economic hardship as determined by federal law," Defendant Navient refused to defer or  
9 postpone payments to Defendant Navient, while Plaintiff experienced an economic  
10 hardship as determined by federal law.  
11

12 132. Defendant Navient omitted or failed to disclose material information to  
13 Plaintiff that even though the Loan Agreement terms require Defendant Navient to grant  
14 Plaintiff a forbearance if Plaintiff has, "a monthly debt burden for Title IV loans that  
15 collectively equals or exceeds 20% of [Plaintiff's] total monthly gross income,"  
16 Defendant Navient refused to grant Plaintiff a forbearance.  
17

18 133. Defendant Navient intended that when assuming its rights under the Loan  
19 Agreement that Plaintiff would rely on the terms of the Loan Agreement and Defendant  
20 Navient assumed rights in the Loan Agreement for that purpose.  
21

22 134. Defendant Navient failed to exercise reasonable care or competence in  
23 communicating that it would not comply with Plaintiff's Borrower's Rights under the  
24 Loan Agreement either at the time Defendant Navient assumed its rights under the Loan  
25 Agreement, or during the term of the Loan Agreement.  
26

27 135. Plaintiff relied on the information memorialized in the Loan Agreement and  
28

1 the Borrower's Rights and Responsibilities.

2 136. Plaintiff's reliance upon the terms set forth by the Loan Agreement and  
3 Borrower's Rights and Responsibilities was justified.  
4

5 137. As a result of Defendant Navient's misrepresentations Plaintiff, Plaintiff  
6 has suffered economic losses to be proven at trial, but not less than One Hundred Ninety  
7 One Thousand Six Hundred Seven Dollars and 43/100 (\$191,607.43).  
8

9 THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

- 10 (a) For an Order declaring that Defendant Navient committed a negligent  
11 misrepresentation against Plaintiff under the written Loan Agreement;
- 12 (b) For Plaintiff's compensatory, consequential, incidental and economic  
13 damages in an amount to be proven at trial;
- 14 (c) For pre-interest and post-interest (if applicable) at the highest rate allowed  
15 by law;
- 16 (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses;  
17 and
- 18 (e) For such other and further relief as this Court deems just and proper under  
19 the circumstances.

20 **COUNT SEVEN**

21 **(Defendant Navient Committed Common Law Fraud Under a Written Loan**  
22 **Agreement With Plaintiff When Refusing to Both Communicate With Plaintiff at**  
23 **Permanent Addresses Plaintiff Provided to Defendant Navient And Reviewing**  
24 **Plaintiff's Requests for a Deferment or Forbearance Under the Terms of the Loan**  
**Agreement, Opting Instead to Declare And Enter a Default Under the Loan**  
**Agreement Against Plaintiff)**

25 138. Plaintiff incorporates the allegations in the paragraphs above as if set forth  
26 fully herein.

27 139. Defendant Navient and Plaintiff were parties to a written Loan Agreement.  
28

1           140. Defendant Navient, as assignee to the Loan Agreement, represented to  
2 Plaintiff that Defendant Navient would deliver correspondence and notices to Plaintiff at  
3 the permanent address Plaintiff provided and updated in writing to Defendant Navient.  
4

5           141. Defendant Navient, as assignee to the Loan Agreement, represented to  
6 Plaintiff that, “Upon [Plaintiff’s] request, [Defendant Navient] will provide [Plaintiff]  
7 with a deferment application that explains [Plaintiff’s] eligibility requirements.”  
8

9           142. Defendant Navient, as assignee to the Loan Agreement, represented to  
10 Plaintiff that the Loan Agreement terms give Plaintiff a right to defer or postpone  
11 repayments to Defendant Navient, while Plaintiff is, “...experiencing an economic  
12 hardship as determined by federal law.”  
13

14           143. Defendant Navient, as assignee to the Loan Agreement represented to  
15 Plaintiff that the Loan Agreement terms require Defendant Navient to grant Plaintiff a  
16 forbearance if Plaintiff has, “a monthly debt burden for Title IV loans that collectively  
17 equals or exceeds 20% of [Plaintiff’s] total monthly gross income.”  
18

19           144. The representations from Defendant Navient, as assignee to the Loan  
20 Agreement were false, because: 1) Defendant Navient refused to send correspondence or  
21 notices to the permanent addresses that Plaintiff provided to Defendant Navient; 2)  
22 refused to provide Plaintiff with a deferment application that explained Plaintiff’s  
23 eligibility requirements when requested by Plaintiff; 3) refused to defer or postpone  
24 Plaintiff’s repayments to Defendant Navient under the Loan Agreement, while Plaintiff  
25 experienced an ongoing economic hardship as determined by federal law; and 4) refused  
26 to grant Plaintiff a forbearance to Plaintiff, despite Plaintiff having a monthly debt burden  
27  
28

1 for Title IV loans that collectively equals or exceeds 20% of Plaintiff's total monthly  
2 gross income.

3 145. The representations from Defendant Navient as assignee to the Loan  
4 Agreement were material, because the Loan Agreement terms were sufficiently important  
5 to influence Plaintiff updating his then-permanent address with Defendant Navient and  
6 requesting forbearance and deferment applications due to economic hardship.  
7

8 146. Defendant Navient knew that its representations to Plaintiff under the Loan  
9 Agreement were false, because: 1) Defendant Navient refused to deliver notices and  
10 correspondence to the permanent addresses that Plaintiff provided to Defendant Navient;  
11 and 2) Defendant Navient refused to either provide Plaintiff deferment and forbearance  
12 applications to Plaintiff, prior to entering a default under the Loan Agreement and  
13 declaring the Loan Agreement default to Defendant PHEAA.  
14

15 147. Defendant Navient intended that Plaintiff would act upon the Loan  
16 Agreement representations in the manner reasonably contemplated by Defendant  
17 Navient, because: 1) Plaintiff previously complied with the Loan Agreement terms when  
18 assignor, Sallie Mae, was the loan servicer; 2) Defendant Navient entered a default  
19 against Plaintiff, claiming to Defendant PHEAA that Plaintiff breached the Loan  
20 Agreement terms; and 3) Defendant Navient had an immediate pecuniary benefit in  
21 Plaintiff defaulting under the Loan Agreement, because Defendant PHEAA (as guarantor)  
22 would immediately pay (and immediately paid) Defendant Navient ninety seven percent  
23 (97%) Loan Agreement's outstanding balance upon Defendant Navient declaring to  
24 Defendant PHEAA that Plaintiff defaulted under the Loan Agreement.  
25  
26  
27  
28

1           148. Plaintiff did not know that Defendant Navient's representations under the  
2 Loan Agreement were false, because assignor, Sallie Mae, had always complied with its  
3 duties to Plaintiff under the Loan Agreement.  
4

5           149. Plaintiff relied on the truth of the Loan Agreement representations assumed  
6 by Defendant Navient when updating Plaintiff's then-permanent address with Defendant  
7 Navient and timely requesting from Defendant Navient, deferment and forbearance  
8 applications, due to Plaintiff's economic hardship.  
9

10          150. Plaintiff's reliance upon the Defendant Navient's representations, as  
11 memorialized by terms set forth by the Loan Agreement and Borrower's Rights and  
12 Responsibilities was justified, because the assignor under the Loan Agreement, Sallie  
13 Mae, had complied with the Loan Agreement terms, during its servicing of the Loan  
14 Agreement.  
15

16          151. Plaintiff's reliance upon the Defendant Navient's representations, as  
17 memorialized by terms set forth by the Loan Agreement and Borrower's Rights and  
18 Responsibilities was also justified, because Plaintiff was aware that under the Guarantor  
19 Agreement with Defendant PHEAA, Defendant PHEAA requires Defendant Navient to  
20 fully comply with its duties under the Loan Agreement, prior to entering a default against  
21 Plaintiff.  
22

23          152. As a result of Defendant Navient defrauding Plaintiff, Plaintiff has suffered  
24 economic losses to be proven at trial, but not less than One Hundred Ninety One  
25 Thousand Six Hundred Seven Dollars and 43/100 (\$191,607.43).  
26

27          THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:  
28

- (a) For an Order declaring that Defendant Navient committed a common law fraud against Plaintiff under the written Loan Agreement;
- (b) For Plaintiff's compensatory, consequential, incidental and economic damages in an amount to be proven at trial;
- (c) For pre-interest and post-interest (if applicable) at the highest rate allowed by law;
- (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses; and
- (e) For such other and further relief as this Court deems just and proper under the circumstances.

#### COUNT EIGHT

#### **(Defendant Navient Committed Defamation/False Light/Libel Against Plaintiff When Entering a Default Against Plaintiff Under the Loan Agreement And Reporting the Default to Credit Reporting Agencies And Defendant PHEAA)**

153. Plaintiff incorporates the allegations in the paragraphs above as if set forth fully herein.

154. Defendant Navient when posting the false statement that Plaintiff defaulted under a Loan Agreement with Defendant Navient to credit reporting agencies and Defendant PHEAA, made a public and patently false statement about Plaintiff.

155. Defendant Navient made its statement about Plaintiff with actual malice, intent and reckless disregard to the statement's truth, because Defendant Navient: 1) ignored Plaintiff's correspondence to Defendant Navient, updating Plaintiff's permanent addresses, as required under the Loan Agreement; 2) ignored Plaintiff's correspondence to Defendant Navient, requesting Defendant Navient review Plaintiff's requests for student loan deferment or forbearance, due to Plaintiff's economic hardship; and 3)



1 illegally defaulted Plaintiff under the Loan Agreement for improper pecuniary gain,  
2 evidenced by the guarantor paying Defendant ninety seven percent (97%) of the Loan  
3 Agreement's outstanding loan balance in exchange for Defendant Navient's false  
4 statement that Plaintiff defaulted under the Loan Agreement.  
5

6 156. As a result of Defendant Navient's false statement that Plaintiff defaulted  
7 under the Loan Agreement, Plaintiff has suffered general damages from loss of his  
8 reputation in amounts to be proven at trial, but not less than Seventy Five Thousand  
9 Dollars (\$75,000).  
10

11 157. As a result of Defendant Navient's false statement that Plaintiff defaulted  
12 under the Loan Agreement, Plaintiff has suffered special damages to Plaintiff's property,  
13 business, trade, profession and/or occupation in amounts to be proven at trial, but not less  
14 than Seventy Five Thousand Dollars (\$75,000).  
15

16 158. As a result of Defendant Navient's false statement that Plaintiff defaulted  
17 under the Loan Agreement, Plaintiff is entitled to exemplary damages to be proven at  
18 trial, but not less than Seventy Five Thousand Dollars (\$75,000).  
19

20  
21 THEREFORE, Plaintiff requests Judgment against Defendant Navient, as follows:

- 22 (a) For an Order declaring that Defendant Navient made false, public  
23 statements that Plaintiff defaulted under the Loan Agreement;
- 24 (b) For Plaintiff's general, special, and exemplary damages in an amount to be  
25 proven at trial;
- 26 (c) For pre-interest and post-interest (if applicable) at the highest rate allowed  
27 by law;
- 28 (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses;

1 and

2 (e) For such other and further relief as this Court deems just and proper under  
3 the circumstances.

4 **COUNT NINE**

5 **(Defendant PHEAA And Its Agent Defendant Performant Committed**  
6 **Defamation/False Light/Libel Against Plaintiff When Reporting the Default of the**  
7 **Loan Agreement to Credit Reporting Agencies)**

8 159. Plaintiff incorporates the allegations in the paragraphs above as if set forth  
9 fully herein.

10 160. Defendant Performant on behalf of Defendant PHEAA posting the false  
11 statement that Plaintiff defaulted under a Loan Agreement with Defendant Navient to  
12 credit reporting agencies, made a public and patently false statement about Plaintiff.  
13

14 161. Defendants PHEAA and Performant made its statements about Plaintiff  
15 with actual malice, intent and reckless disregard to the statement's truth, because  
16 Defendants PHEAA and Performant: 1) had a reasonable opportunity to review  
17 correspondence and documents exchanged between Defendant Navient and Plaintiff upon  
18 Defendant PHEAA acquisition of rights under the Loan Agreement; and 2) despite  
19 reviewing correspondence and documents exchanged between Defendant Navient and  
20 Plaintiff upon Defendant PHEAA acquisition of rights under the Loan Agreement,  
21 nevertheless falsely stated to numerous credit reporting agencies that Plaintiff had  
22 defaulted under the Loan Agreement.  
23

24 162. As a result of Defendants PHEAA's and Performant's false statements that  
25 Plaintiff defaulted under the Loan Agreement, Plaintiff has suffered general damages  
26 from loss of his reputation in amounts to be proven at trial, but not less than Seventy Five  
27  
28

1 Thousand Dollars (\$75,000).

2 163. As a result of Defendants PHEAA's and Performant's false statements that  
3 Plaintiff defaulted under the Loan Agreement, Plaintiff has suffered special damages to  
4 Plaintiff's property, business, trade, profession and/or occupation in amounts to be  
5 proven at trial, but not less than Seventy Five Thousand Dollars (\$75,000).  
6

7 164. Defendants PHEAA's and Performant's false statements that Plaintiff  
8 defaulted under the Loan Agreement, Plaintiff is entitled to exemplary damages to be  
9 proven at trial, but not less than Seventy Five Thousand Dollars (\$75,000).  
10

11  
12 THEREFORE, Plaintiff requests Judgment against Defendants PHEAA and  
13 Performant, as follows:

- 14 (a) For an Order declaring that Defendant Navient made false, public  
15 statements that Plaintiff defaulted under the Loan Agreement;  
16  
17 (b) For Plaintiff's general, special, and exemplary damages in an amount to be  
18 proven at trial;  
19  
20 (c) For pre-interest and post-interest (if applicable) at the highest rate allowed  
21 by law;  
22  
23 (d) For attorneys' fees (should Plaintiff retain an attorney), costs and expenses;  
24 and  
25  
26 (e) For such other and further relief as this Court deems just and proper under  
27 the circumstances.  
28

**JURY TRIAL**

165. Plaintiff hereby requests and demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for damages for judgment against Defendants as

1 follows:

- 2 a) General damages in amounts to be proven at trial, as to the causes of action,  
3 claims and theories of relief alleged herein;  
4  
5 b) Punitive damages against the individually named Defendants in amounts  
6 deemed just and reasonable as to the causes of action, claims and theories of  
7 relief alleged herein;  
8  
9 c) Costs against all Defendants;  
10  
11 d) Attorneys fees against all Defendants, should attorneys enter appearances on  
12 behalf of Plaintiff; and  
13  
14 e) Such other and further relief which may seem just and reasonable under the  
15 circumstances.

16 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of November, 2018.

17  
18 By: /s/: Devin Andrich  
19 Devin Andrich  
20 Plaintiff Pro Se  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2018, I electronically transmitted the foregoing document to the Clerk's Office, using the CM/ECF System for filing to the following recipients:

The Honorable Douglas L. Rayes  
Judge, United States District Court of Arizona  
401 West Washington Street, Suite 526  
Phoenix, Arizona 85003-2162

Benjamin S. Noren  
Hinshaw & Culbertson LLP  
800 Third Avenue, 13<sup>th</sup> Floor  
New York, New York 10022  
*Attorneys for Defendant Navient*

By: /s/: Devin Andrich  
Devin Andrich